IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.35619 of 1998

TUESDAY, THE TWENTY FOURTH DAY OF APRIL TWO THOUSAND AND SEVEN

Between:

P. Bharani Babu, S/o. Madhusudhana Rao, Hindu, aged about 37 years, Managing Partner of Seetharama Finance, 40-27-87, Nirmala High School Road, Patamata, Vijayawada, Krishna District.

… Petitioner

And

The Deputy Commissioner of Prohibition and Excise, Guntur Division, Guntur, and others.

… Respondents

Order:

This Writ Petition has been filed by a Managing Partner of a finance company in Vijayawada, which has financed the third respondent for purchasing a lorry bearing Reg.No.AP-7-T-186, questioning the order dated 23-11-1998, passed in CR.No.2286/DPE/98/B2, confirming the orders of the first respondent

dated 24-07-1998 and to quash the same as illegal and arbitrary.

2. Briefly stated, the facts of the case are:

On 24-03-1997, the Prohibition and Excise Inspector, Sullurpet, while conducting a vehicular check at Prohibition Check post near Srinivasa Teja Gardens, intercepted a lorry bearing Reg.No.AP-7-T-186, and on checking it, found that it was illegally transporting 2363 Qts. (each 750 ml) bottles of Whitefield Malt Whisky arranged in 197 plastic boxes and also 80 boxes of Myda. One Mr. Ravi, the driver of the lorry, is said to have escaped from the scene of offence. The Prohibition and Excise officials arrested the accused Sri Rajamutu Naidu Babu and Sri SK Basha and seized the lorry along with the contraband under the cover of mediators report. A case was registered in Pr.No.577/96-97 in Prohibition and Excise Station, Sullurpet, under Section 8 (b) (ii) of the A.P. Prohibition Act, 1995 ('the Act' for brevity). The lorry along with the seized contraband was produced before the Deputy Commissioner of Prohibition and Excise, Guntur. At that stage, petitioner filed W.P.No.26061 of 1997, before this court seeking release of his lorry, which was disposed of directing the Deputy Commissioner of Prohibition and Excise, Guntur to release the lorry in question on condition that its owner furnishes a bank guarantee for the value of the lorry. Thereafter, on petitioner furnishing bank guarantee and also an undertaking, the lorry was ordered to be released in his favour. Thereafter, the primary authority, i.e. the Deputy Commissioner, initiated proceedings for confiscation and issued show cause notice to the petitioner, requiring him to show cause as to why the lorry, along with the contraband, should not be confiscated. Petitioner had filed his explanation stating that he is not, in any way, concerned with the offence and requested to drop the proceedings of

confiscation of the vehicle. As much as the transportation of liquor, i.e. 2363 Qts. (each 750 ml) bottles of Whitefield Malt Whisky, is illegal and in violation of the provisions of the Act, the Deputy Commissioner ordered confiscation of the lorry along with the seized contraband. Aggrieved thereby, petitioner filed an appeal to the Commissioner of Prohibition and Excise, Hyderabad under Section 13 of the Act. The appellate authority/Commissioner dismissed the said appeal, confirming the confiscation orders of the primary authority. At that stage, petitioner had filed this Writ Petition challenging the orders of the Commissioner of Prohibition and Excise.

3. Learned counsel for the petitioner contends that the petitioner is no way concerned with the alleged offence, and he has only financed the third respondent for purchase of the lorry; hence, there is no reason in confiscating the lorry.

4. However, it is to be seen that the petitioner is not the owner of the vehicle. Merely because he had financed the third respondent for purchase of the vehicle, he has no *locus standi* to question the confiscation order passed by the primary authority as confirmed by the appellate authority. Under Section 12 of the Act, without prejudice to the powers of the Excise Officers under Section 46 of the Andhra Pradesh Excise Act, 1968, in any case in which an offence has been committed under the provisions of the Act, the liquor by means of which the offence has been committed is liable for confiscation along with receptacles, packages, coverings etc. Under Section 8-B of the Act, possession of liquor without any licence or permit granted under the Andhra Pradesh Excise Act, 1968, is an offence. Further, under Section 13 of the Act, anything liable for confiscation under Section 12 is seized and detained under the provisions of the Act, the officer who

is empowered to seize such property shall produce the said seized property along with the vehicle before the Deputy Commissioner of Prohibition and Excise, who is empowered to confiscate the vehicle involved in the offence along with the contraband. Though the owner of the vehicle involved in the offence has also been made as party Respondent No.3 in the Writ Petition, the Writ Petition was dismissed so far Respondent No.3 is concerned, by order dated 04-04-2003. It is a case where the vehicle in question was involved in transportation of liquor without any valid permit as required under the provisions of the Andhra Pradesh Excise Act, 1968. Hence, the primary authority/Deputy Commissioner of Prohibition and Excise, following the procedure contemplated under law, had pass orders of confiscation, confiscating the vehicle in question, along with the contraband seized, and the said orders have also been confirmed by the appellate authority. Hence, I do not find any illegality either in the order of confiscation passed by the primary authority or in the order of the appellate authority, confirming the said order.

5. The only contention put forth by learned counsel for the petitioner, that as the petitioner is the financer of the vehicle in question, the vehicle cannot be confiscated, is not a ground at all to set aside the orders of confiscation. Various provisions of the Act Contemplate an enquiry to verify whether any offence, involving the vehicle, was committed or not, and when it is found that the vehicle in question was used for transportation of liquor without any valid permit, as required under the provisions of the A.P. Excise Act, 1968, such vehicle is liable for confiscation. Merely because the petitioner is the financer of the vehicle in question, he cannot have any preferential claim to assail the validity of the order of confiscation that had been passed in exercise of statutory powers conferred on the Deputy

Commissioner of Prohibition and Excise, under the provisions of the Act.

6. Writ Petition is devoid of merits and is accordingly dismissed. No costs.

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JUSTICE R. SUBHASH REDDY.

April 24, 2007
MRR